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Review of HUD's New Assistance Animal Notice

Re: HUD Guidelines FHEO-2020-01
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As many in the residential housing community are aware, HUD just issued new guidelines relating to assistance animals under the Fair Housing Act. The publication is referred to as the "Assistance Animal Notice." The AAN has long been anticipated, and needed frankly, as those of us in the practice of reviewing requests for accommodation for assistance animals see many areas of gray, and many participants in the process who are not informed such as housing providers and medical providers. The AAN replaces the prior HUD Guidelines from 2013. Guidelines from HUD do not alter or expand a housing provider's obligations under the Fair Housing Act but serve as a guide toward following the requirements of the law. Finally, the AAN is effective immediately and will guide reviews of "AA" requests going forward. No AA request assessed under the previous guidelines is to be re-evaluated.

The AAN has two component parts. The first is a guide for housing providers in assessing requests for accommodation of assistance animals. The second part is a guide to be used by persons with assistance animals to explain what is needed from housing providers when assessing a request for accommodation. Significantly, the second section is intended to be given to medical providers to show what information should be in a letter in support of an assistance animal. When returning a request for more information a best practice would be to send the link to the AAN, directing the animal owner to specific provisions of the AAN addressing the need for sufficient and appropriate information to support the request for accommodation.

The AAN seems helpful in bringing clarity to several issues where confusion is common. Housing providers should familiarize themselves with the AAN, and begin using its terminology and analytical framework. Following are some comments in service to PetScreening's partners and customers.

Assistance Animal defined. Just as California did with its new regulations (effective 1.1.20), the AAN brings some clarity of language regarding assistance animals. "Assistance animals" is the broader term and includes two subsets of animals, service animals, and support animals.

Under the ADA, *service animal* means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. AAN, p. 6.

The AAN instructs that the first inquiry in assessing a request for accommodation is determining whether the animal is a service animal. See the flow of questions on pp. 6-7. Note that “work or tasks” the dog is trained to do does not include emotional support. If the animal is determined to be a service animal, no documentation is required from the animal owner.

If the animal is not a service animal, then the inquiry proceeds to determine if it is a “support animal,” defined as “other trained or untrained animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities.” AAN, p. 3. The analysis for support animals is set forth in pages 7-15, and includes analysis on whether a disability is obvious, or observable. “Observable impairments generally tend to be obvious and would not be reasonably attributable to non-medical causes by a lay person.”

Most housing providers’ assessment practices will be largely the same for assistance animals with the exception of need to determine whether the animal is a service animal at the outset. Those who have adapted their practices to accommodate the California regulations will find the new HUD Guidelines familiar territory.

Truth and Accuracy of Information. Significantly, the AAN states: “A housing provider, at its discretion, may make the truth and accuracy of information provided during the process part of the representations made by the tenant under a lease or similar housing agreement to the extent that the lease or agreement requires the truth and accuracy of other material information.” See, e.g., AAN, p. 7, 9. We are told that HUD is concerned that assistance animal owners would be held to “heightened requirements” in requests for accommodation than the landlord otherwise requires in the underlying business transaction. PetScreening’s profiles do have the tenant verify that the information provided is true and accurate. PetScreening believes those affirmations and representations may be helpful in potential future disputes with the tenant, as well as providing some measure of validity to the information provided by the animal owner. In the case of AA requests, however, this provision of the AAN presents a possible problem if the housing provider does not have any language in its lease or the application process, for example, that has the tenant verifying the truth and accuracy of information provided in connection with the tenancy. PetScreening urges housing providers to review their process to confirm that current and prospective tenants are asked to verify information they supply in their application and lease execution procedures.

Determinations of Disability/Internet letters. The AAN provides helpful information relating to the determination whether the person is disabled, including assessment of information provided by the requester. See AAN, pp. 9-11. Most of this information is familiar to us, but there is an interesting new statement on Internet providers of certificates and ESA letters:

Some websites sell certificates, registrations, and licensing documents for assistance animals to anyone who answers certain questions or participates in a short interview and pays a fee. Under the Fair Housing Act, a housing provider may request reliable documentation when an individual requesting a reasonable accommodation has a disability and disability-related need for an accommodation that are not obvious or otherwise known.³⁵ In HUD’s experience, such documentation from the internet is not, by itself, sufficient to reliably establish that an individual has a non-observable disability or disability-related need for an assistance animal.

By contrast, many legitimate, licensed health care professionals deliver services remotely, including over the internet. One reliable form of documentation is a note from a person’s health care professional that confirms a person’s disability and/or need for an animal when the provider has personal knowledge of the individual.

AAN, p. 11 (emphasis added). This statement probably reflects current practice by many providers. PetScreening, for example, already rejects “certificates, registrations, and licensing documents” as insufficient to support a request. And PetScreening generally honors letters from legitimate, licensed health care professionals who deliver services remotely, over the internet. The focus here seems to be on the “personal knowledge” the provider may have of the individual. This is a new term introduced by HUD in the AAN, and we expect it to be the focus of inquiries into the validity of ESA letters from internet providers. Significantly, HUD does not emphasize the inquiry, as many industry proponents have advocated, to press providers to state details of their personal interaction and relationship with the patient. While some inquiry into “personal knowledge” seems allowable, it appears the guidance from HUD supports more limited inquiries regarding internet letters. PetScreening has confirmed with HUD enforcement personnel that HUD does not consider “personal knowledge” to be limited to face-to-face interaction.

Disability Related Need. The AAN is instructive as to the documentation and support of the “need” requirement in any request for accommodation:

Information Confirming Disability-Related Need for an Assistance Animal.

- Reasonably supporting information often consists of information from a licensed health care professional – e.g., physician, optometrist, psychiatrist, psychologist, physician’s assistant, nurse practitioner, or nurse – general to the condition but specific as to the individual with a disability and the assistance or therapeutic emotional support provided by the animal.
- A relationship or connection between the disability and the need for the assistance animal must be provided. This is particularly the case where the disability is non-observable, and/or the animal provides therapeutic emotional support.
- For non-observable disabilities and animals that provide therapeutic emotional support, a housing provider may ask for information that is consistent with that identified in the Guidance on Documenting an Individual’s Need for Assistance Animals in Housing (*see Questions 6 and 7) in order to conduct an individualized assessment of whether it must provide the accommodation under the Fair Housing Act. The lack of such documentation in many cases may be reasonable grounds for denying a requested accommodation.

AAN, p.12 (emphasis added). The second part of the AAN includes information relevant to need and, for example, provides a list of work or tasks provided by support animals:

Some other examples of work, tasks or other types of assistance provided by animals include:⁶⁰

- Helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors,
- Reminding a person with mental illness to take prescribed medication,
- Alerting a person with diabetes when blood sugar is high or low,
- Taking an action to calm a person with post-traumatic stress disorder (PTSD) during an anxiety attack,
- Assisting the person in dealing with disability-related stress or pain,
- Assisting a person with mental illness to leave the isolation of home or to interact with others,
- Enabling a person to deal with the symptoms or effects of major depression by providing a reason to live, or
- Providing emotional support that alleviates at least one identified symptom or effect of a physical or mental impairment.

AAN, p.19

Type of Animal. The AAN makes a significant distinction in types of animals. No longer is any type animal readily subject to be a support animal. If the animal is commonly kept in households (“dog, cat, small bird, rabbit, hamster, gerbil, other rodent, fish, turtle, or other small, domesticated animal”) then the request should be granted assuming disability related need has been established. “Reptiles (other than turtles), barnyard animals, monkeys, kangaroos, and other non-domesticated animals are not considered common household animals.” AAN, p. 12. Other type animals are considered “unique,” and the requester has a “substantial burden” to demonstrate the disability related need for these animals.¹ One other aspect of the “unique animal” category is the housing provider may enforce a “no pets” policy or a policy prohibiting the type animal the requester seeks to have, if the requester obtains the animal before submitting reliable documentation from a medical provider that reasonably supports the disability related need for the animal. The AAN provides a couple examples of unique animals that might be appropriate.

Guidance on Documenting an Individual’s Need for Assistance Animals in Housing. This second part of the AAN seems very helpful to housing providers and likely will assist housing providers in their work. This part of the guidance is a “summary of information that a housing provider may need to know from a health care provider” about the individual’s need for the assistance animal. The intent is that individuals will give the guidance to their medical providers so that letters are tailored to comply with the guidance. Housing providers will likely avoid much deliberation and frustration in trying to interpret support animal letters, and in disputing the substance of letters with animal owners. AAN’s clear guidelines should be cited when return a request for more detailed information, stating the clear requirement that disability related need must be articulated. This provision is a big improvement over prior practice based on the 2013 HUD guidelines and sample letter, which were unclear and probably rarely read. Hopefully, we will see a strong improvement in the quality of letters from medical providers (will there be fewer?).

In sum, the AAN seems to blend well with PetScreening’s current practices which of course were already based on the previous HUD guidelines. The changes address issues that have frustrated housing providers for some time, including the question whether service animals were treated differently under the FHAct, and lack of knowledge of medical professionals in the needed substance of letters they write. Also, these guidelines are likely to be in place for a long time, if the prior 2013 publication is any guide.



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¹ There is a tension here where the AAN says only a dog can be a service animal. Note the AAN is only a guide and does not alter laws, such as the ADA which says a miniature horse, for example, can also be a service animal. Also, California regulations, effective 1.1.20, state that miniature horses, and possibly other animals may be service animals.